THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.17945 of 2003

Dated:17.08.2006

Between:

S.Khader Basha, and others.

…Petitioners

and

The Government of Andhra Pradesh, rep.by its Secretary,
Transport, Roads and Buildings Department, Secretariat Buildings,
Hyderabad, and others.

…Respondents

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ORDER:

Six petitioners herein seek a writ of mandamus declaring the action of respondent Nos.2 and 3 in trying to demolish the permanent structures raised by the petitioners in the land in Survey No.99/2 of Chandragiri Village as illegal and arbitrary and for a consequential direction to the respondents not to demolish the existing structures without following due process of law.

An affidavit on behalf of the petitioners in support of the Writ Petition is filed by the first petitioner, S.Khader Basha. It is alleged by him that the petitioners occupied a small portion of Government land near Tirupathi-Chandragiri road in 1980. The temporary/semi-permanent huts/structures were later converted into permanent structures. On a request made by the petitioners, it is alleged, the third respondent assigned house site pattas on 12.11.1984. The petitioners constructed houses by borrowing money. They are regularly paying property tax to the Gram Panchayat-Chandragiri. On 22.08.2003, it is alleged, the second respondent along with the third respondent came to the land and threatened to demolish the permanent structures for the purpose of widening the road. There is no necessity to widen the road

and the demolition activity without notice is illegal.

The Mandal Revenue Officer, Chandragiri, filed a detailed counter affidavit. The allegation that the petitioners were assigned house site pattas in 1984 is denied. It is further stated that the land in Survey No.99/2 admeasuring Acs.6.93 cents is classified as road poramboke and there is prohibition for assigning the land classified as road poramboke. The petitioners encroached the road poramboke/road margin, highway from Tirupathi-Chittoor, highhandedly and raised structures for commercial purpose and erected beedi bunks, tea kiosks, fruit stalls, cool drink shops, chicken stalls etc. The encroachments made by the petitioners are causing hindrance to the free flow of the traffic, and therefore, the encroachment is objectionable. A survey was conducted and a report was submitted to the District Collector, Chittoor, who passed orders under Section 7-A(1) of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), dated 15.04.2003, authorizing the removal of encroachments on the road margins in Chandragiri. The house site pattas alleged by the petitioners are fabricated. It is further stated that the objectionable encroachments made by the petitioners have become a source of danger to the travelling public and the precious and valuable lives of commuters is imperil.

The Writ Petition is finally heard though interlocutory matters are appearing in the list on an application, being W.V.M.P.No.168 of 2006, filed by the Mandal Revenue Officer, for vacating the interim order dated 27.08.2003.

The learned Counsel for the petitioner submits that the petitioners have occupied Government land pursuant to the patta granted to them and therefore, their occupation cannot be treated as objectionable encroachments. He has produced documents pertaining to the third petitioner herein in respect of the land admeasuring Ac.0.01½ cents in Survey No.99/2 as well as the order in I.A.No.3225 of 1998 and decree in O.S.No.963 of 1996 on the file of the Court of the Principal Junior Civil Judge, Tirupathi, in support of the contention that the encroachment made by the petitioners is unobjectionable. He also submits that the impugned action of the respondents without notice is illegal and arbitrary. **Per contra,** the learned Assistant Government Pleader for Revenue (Assignment) submits that the petitioners have encroached upon the road margin and therefore, the encroachment is objectionable. He submits that the road is made for the commuters and the pedestrians to pass and re-pass, and the same is not intended for setting up business premises. The learned Assistant Government Pleader submits that all the petitioners have set up bunks/premises for the purpose of their

business and the same is causing inconvenience to the travelling public. Lastly, he would submit that when the Collector has passed orders under Section 7-A of the Act, no notice is required. There is no dispute that the petitioners have their business bunks on Tirupathi-Chittoor highway on the road margin. Though a citizen has a right to carry on business on the streets/roads by hawkers and merchandise, no citizen can claim a right to squat at a particular place on the road for the purpose of business (see **Sodan Singh v. New Delhi Municipal Committee**[1] and **Ahmedabad Municipal Corporation v. Nawab Khan**[2]). Therefore, when a person occupies a road margin or a portion forming part of the road, it should be presumed that such encroachment is objectionable. When the occupation is objectionable, for this ground whether the notice is required to be issued before such person is evicted from the land?

In this case, statedly, the District Collector, Chittoor, by letter bearing Ref.No.E5/674/2003, dated 15.04.2003, directed removal of the encroachments on Chittoor-Tirupathi road in accordance with Section 7-A(1) of the Act, which reads as under.

> **7-A.Encroachment by group of persons on Government lands and their eviction:-** Where the District Collector knows or has reason to believe that a group or groups of persons without any entitlement and with the common object of occupying any land, which is the property of the Government, are occupying or have occupied any such land, and **if such group or groups of persons have not vacated the land on demand by the District Collector or any officer authorized by him in this behalf, the District Collector shall, notwithstanding anything in this Act, order without any notice, the immediate eviction of the encroacher from the land and the taking of possession of the land;** and thereupon it shall be lawful for any officer authorized by the District Collector in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary and take possession of the land.
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> (emphasis supplied)

A plain reading of the above would show that a notice is not required while ordering removal of the encroachment made by the petitioners when the statute specifically exclude the rule of *audi alteram partem*. This Court is of the considered opinion that for want of notice, the action of the respondents cannot be faulted, especially, when there is admission that the petitioners occupied road margin, even if such occupation is pursuant to the pattas granted in 1984, which is specifically denied by the respondents.

The Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

17.08.2006
vs

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[1] AIR 1989 SC 1988

[2] AIR 1997 SC 152